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SENATE BILL 77

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

Mary Jane M Garcia

AN ACT

**RELATING TO ASSAULT AND BATTERY AGAINST A HOUSEHOLD MEMBER;
ADDING THOSE OFFENSES TO THE LIST OF OFFENSES DEFINED AS
SERIOUS VIOLENT OFFENSES FOR THE PURPOSE OF DETERMINING EARNED
MERITORIOUS DEDUCTIONS FOR INMATES; AMENDING A SECTION OF THE
NMSA 1978.**

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**Section 1. Section 33-2-34 NMSA 1978 (being Laws 1999,
Chapter 238, Section 1, as amended) is amended to read:**

**"33-2-34. ELIGIBILITY FOR EARNED MERITORIOUS
DEDUCTIONS. --**

**A. To earn meritorious deductions, a prisoner
confined in a correctional facility designated by the
corrections department must be an active participant in
programs recommended for the prisoner by the classification**

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1 committee and approved by the warden. Meritorious deductions
2 shall not exceed the following amounts:

3 (1) for a prisoner confined for committing a
4 serious violent offense, up to a maximum of four days per month
5 of time served;

6 (2) for a prisoner confined for committing a
7 nonviolent offense, up to a maximum of thirty days per month of
8 time served;

9 (3) for a prisoner confined following
10 revocation of parole for the alleged commission of a new felony
11 offense or for absconding from parole, up to a maximum of four
12 days per month of time served during the parole term following
13 revocation; and

14 (4) for a prisoner confined following
15 revocation of parole for a reason other than the alleged
16 commission of a new felony offense or absconding from parole,
17 up to a maximum of eight days per month of time served during
18 the parole term following revocation.

19 B. A prisoner may earn meritorious deductions upon
20 recommendation by the classification committee, based upon the
21 prisoner's active participation in approved programs and the
22 quality of the prisoner's participation in those approved
23 programs. A prisoner may not earn meritorious deductions
24 unless the recommendation of the classification committee is
25 approved by the warden.

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1 C. If a prisoner's active participation in approved
2 programs is interrupted by a lockdown at a correctional
3 facility, he may continue to be awarded meritorious deductions
4 at the rate he was earning meritorious deductions prior to the
5 lockdown, unless the warden determines that the prisoner's
6 conduct contributed to the initiation or continuance of the
7 lockdown.

8 D. A prisoner confined in a correctional facility
9 designated by the corrections department is eligible for lump-
10 sum meritorious deductions as follows:

11 (1) for successfully completing an approved
12 vocational, substance abuse or mental health program, one
13 month; except when the prisoner has a demonstrable physical,
14 mental health or developmental disability that prevents the
15 prisoner from successfully earning a general education diploma,
16 in which case, the prisoner shall be awarded three months;

17 (2) for earning a general education diploma,
18 three months;

19 (3) for earning an associate's degree, four
20 months;

21 (4) for earning a bachelor's degree, five
22 months;

23 (5) for earning a graduate qualification, five
24 months; and

25 (6) for engaging in a heroic act of saving

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1 life or property, engaging in extraordinary conduct for the
2 benefit of the state or the public that is at great expense,
3 risk or effort on behalf of the inmate, or engaging in
4 extraordinary conduct far in excess of normal program
5 assignments that demonstrates the prisoner's commitment to
6 rehabilitate himself. The classification committee and the
7 warden may recommend the number of days to be awarded in each
8 case based upon the particular merits, but any award shall be
9 determined by the director of the adult institutions division
10 of the corrections department.

11 E. Lump-sum meritorious deductions, provided in
12 Paragraphs (1) through (6) of Subsection D of this section, may
13 be awarded in addition to the meritorious deductions provided
14 in Subsections A and B of this section. Lump-sum meritorious
15 deductions shall not exceed one year per award and shall not
16 exceed a total of one year for all lump-sum meritorious
17 deductions awarded in any consecutive twelve-month period.

18 F. A prisoner is not eligible to earn meritorious
19 deductions if the prisoner:

- 20 (1) disobeys an order to perform labor,
21 pursuant to Section 33-8-4 NMSA 1978;
22 (2) is in disciplinary segregation;
23 (3) is within the first sixty days of receipt
24 by the corrections department; or
25 (4) is not an active participant in programs

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1 recommended and approved for him by the classification
2 committee.

3 G. The provisions of this section shall not be
4 interpreted as providing eligibility to earn meritorious
5 deductions from a sentence of life imprisonment or a sentence
6 of death.

7 H. The corrections department shall promulgate
8 rules to implement the provisions of this section, and the
9 rules shall be matters of public record. A concise summary of
10 the rules shall be provided to each prisoner, and each prisoner
11 shall receive a quarterly statement of the meritorious
12 deductions earned.

13 I. A New Mexico prisoner confined in a federal or
14 out-of-state correctional facility is eligible to earn
15 meritorious deductions for active participation in programs on
16 the basis of the prisoner's conduct and program reports
17 furnished by that facility to the corrections department. All
18 decisions regarding the award and forfeiture of meritorious
19 deductions at such facility are subject to final approval by
20 the director of the adult institutions division of the
21 corrections department or the director's designee.

22 J. In order to be eligible for meritorious
23 deductions, a prisoner confined in a federal or out-of-state
24 correctional facility designated by the corrections department
25 must actively participate in programs that are available. If a

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1 federal or out-of-state correctional facility does not have
2 programs available for a prisoner, the prisoner may be awarded
3 meritorious deductions at the rate the prisoner could have
4 earned meritorious deductions if the prisoner had actively
5 participated in programs.

6 K. A prisoner confined in a correctional facility
7 in New Mexico that is operated by a private company, pursuant
8 to a contract with the corrections department, is eligible to
9 earn meritorious deductions in the same manner as a prisoner
10 confined in state-run correctional facilities. All decisions
11 regarding the award or forfeiture of meritorious deductions at
12 such facilities are subject to final approval by the director
13 of the adult institutions division of the corrections
14 department or the director's designee.

15 L. As used in this section:

16 (1) "active participant" means a prisoner who
17 has begun, and is regularly engaged in, approved programs;

18 (2) "program" means work, vocational,
19 educational, substance abuse and mental health programs,
20 approved by the classification committee, that contribute to a
21 prisoner's self-betterment through the development of personal
22 and occupational skills. "Program" does not include
23 recreational activities;

24 (3) "nonviolent offense" means any offense
25 other than a serious violent offense; and

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(4) "serious violent offense" means:

(a) second degree murder, as provided in Section 30-2-1 NMSA 1978;

(b) voluntary manslaughter, as provided in Section 30-2-3 NMSA 1978;

(c) third degree aggravated battery, as provided in Section 30-3-5 NMSA 1978;

(d) third degree aggravated battery against a household member, as provided in Section 30-3-16 NMSA 1978;

~~(d)~~ (e) first degree kidnapping, as provided in Section 30-4-1 NMSA 1978;

~~(e)~~ (f) first and second degree criminal sexual penetration, as provided in Section 30-9-11 NMSA 1978;

~~(f)~~ (g) second and third degree criminal sexual contact of a minor, as provided in Section 30-9-13 NMSA 1978;

~~(g)~~ (h) first and second degree robbery, as provided in Section 30-16-2 NMSA 1978;

~~(h)~~ (i) second degree aggravated arson, as provided in Section 30-17-6 NMSA 1978;

~~(i)~~ (j) shooting at a dwelling or occupied building, as provided in Section 30-3-8 NMSA 1978;

~~(j)~~ (k) shooting at or from a motor

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1 vehicle, as provided in Section 30-3-8 NMSA 1978;

2 [~~k~~] (l) aggravated battery upon a
3 peace officer, as provided in Section 30-22-25 NMSA 1978;

4 [~~l~~] (m) assault with intent to commit
5 a violent felony upon a peace officer, as provided in Section
6 30-22-23 NMSA 1978;

7 [~~m~~] (n) aggravated assault upon a
8 peace officer, as provided in Section 30-22-22 NMSA 1978; and

9 [~~n~~] (o) any of the following offenses,
10 when the nature of the offense and the resulting harm are such
11 that the court judges the crime to be a serious violent offense
12 for the purpose of this section: 1) involuntary manslaughter,
13 as provided in Section 30-2-3 NMSA 1978; 2) fourth degree
14 aggravated assault, as provided in Section 30-3-2 NMSA 1978; 3)
15 third degree assault with intent to commit a violent felony, as
16 provided in Section 30-3-3 NMSA 1978; 4) fourth degree
17 aggravated assault against a household member, as provided in
18 Section 30-3-13 NMSA 1978; 5) third degree assault against a
19 household member with intent to commit a violent felony, as
20 provided in Section 30-3-14 NMSA 1978; 6) third and fourth
21 degree aggravated stalking, as provided in Section
22 30-3A-3.1 NMSA 1978; [5] 7) second degree kidnapping, as
23 provided in Section 30-4-1 NMSA 1978; [6] 8) second degree
24 abandonment of a child, as provided in Section 30-6-1 NMSA
25 1978; [7] 9) first, second and third degree abuse of a child,

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1 as provided in Section 30-6-1 NMSA 1978; [~~8~~] 10 third degree
2 dangerous use of explosives, as provided in Section 30-7-5 NMSA
3 1978; [~~9~~] 11 third and fourth degree criminal sexual
4 penetration, as provided in Section 30-9-11 NMSA 1978; [~~10~~]
5 12 fourth degree criminal sexual contact of a minor, as
6 provided in Section 30-9-13 NMSA 1978; [~~11~~] 13 third degree
7 robbery, as provided in Section 30-16-2 NMSA 1978; [~~12~~] 14
8 third degree homicide by vehicle or great bodily injury by
9 vehicle, as provided in Section 66-8-101 NMSA 1978; and [~~13~~]
10 15 battery upon a peace officer, as provided in Section
11 30-22-24 NMSA 1978. "

12 Section 2. EFFECTIVE DATE. --The effective date of the
13 provisions of this act is July 1, 2004.

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